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September 16, 2024

Via ECF

Honorable Meredith A. Vacca
United States District Judge
Kenneth B. Keating Federal Building
100 State Street
Rochester, New York 14614

Re: *Darryl Boyd v. The City of Buffalo, et al.*, Index No. 22-cv-519
John Walker v. The City of Buffalo, et al., Index No. 22-cv-520

Dear Judge Vacca:

Together with Wilmer Cutler Pickering Hale and Dorr LLP and Hoover & Durland LLP, this firm represents Plaintiffs Darryl Boyd and John Walker, Jr. in the above-captioned wrongful conviction civil rights actions, filed more than two years ago, which were recently transferred to your Honor. Prior to this transfer, Judge Vilardo ordered expedited trials over Defendants' objections due to, among other things, both Plaintiffs' poor health conditions (including Mr. Boyd's diagnosis of Stage IV pancreatic cancer), and scheduled back-to-back trials beginning October 15, 2024. Unfortunately, Judge Vilardo was unable to keep those dates due to his criminal caseload, and recently vacated them before transferring the case to Your Honor. I am writing to request a conference to discuss a new case schedule, including the setting of new expedited trial dates.

By way of brief background, Messrs. Boyd and Walker were arrested and incarcerated for murder in 1976 at age 16, and spent most of the rest of their lives in prison or on parole, until the New York Supreme Court vacated their convictions in 2021. These lawsuits seek damages from the municipalities and certain individual police officers who violated Messrs. Boyd and Walker's constitutional rights and caused their loss of liberty and other injuries. Specifically, Messrs. Boyd and Walker allege that Buffalo police detectives manufactured the case against them, despite knowing of compelling evidence that someone else committed the crimes, and that Erie County prosecutors then covered up this and other exculpatory and impeachment evidence notwithstanding their obligations pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. Documentary evidence and deposition testimony obtained during discovery in these

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actions demonstrates that the City of Buffalo and Erie County are liable under *Monell v. Dep't of Social Svcs.*, 436 U.S. 658 (1978), because City and County policies, customs, and practices directly caused the violations of Messrs. Boyd and Walker's constitutional rights.

On February 15, 2024, Plaintiffs moved for expedited trials because of Plaintiffs' dire health conditions and the advanced age of other key witnesses (one potential key witness—Mr. Boyd's criminal defense counsel—already had passed away during discovery, and another key witness—former Erie County District Attorney Edward Cosgrove—has passed away since discovery ended). ECF No. 138.¹ Mr. Boyd, now 65 years old, is suffering from Stage IV pancreatic cancer and was told last December, when the disease was officially diagnosed, that the 50 per cent survival rate for someone in his condition was 14 months (February 2025). Mr. Walker, also now 65, has had two heart attacks and suffers from heart disease and other ailments, including an orthopedic condition that makes it almost impossible for him to walk. Plaintiffs also noted that it was highly unlikely that any summary judgment motion filed by Defendants would be granted—an argument that Magistrate Judge McCarthy (who presided over discovery in these actions) himself noted on the record when denying Defendants' motions to bifurcate discovery. *See* ECF No. 85 at 20:11–13 (“[Defendants’] chance of getting summary judgment on all of the underlying Constitutional violations is an uphill climb”). Judge Vilardo granted Plaintiffs' motions and initially set an October 15, 2024 trial date for Mr. Boyd, to be followed immediately by Mr. Walker's trial. ECF No. 150.

After Judge Vilardo's ruling, Defendants filed summary judgment motions. ECF Nos. 165, 170. Neither the City Defendants nor the County moved on all claims, and so a trial is assured no matter how their motions are decided. In our responsive papers, we believe we conclusively showed, at minimum, the existence of disputed factual issues requiring Defendants' partial motions to be denied. ECF No. 176. As noted, Judge Vilardo later vacated his order scheduling trial to begin on October 15 due to his criminal case docket, the summary judgment motions remain *sub judice*, and the case has now been transferred to Your Honor.

Mr. Boyd's health condition continues to be precarious. He is undergoing weekly chemotherapy treatments, but his prognosis is unchanged. Mr. Walker, fortunately, appears to be in slightly improved health. Other prospective witnesses are in their 80s and even 90s.

The parties had been in mediation with Michael Brady, Esq., of Hagerty & Brady, over the summer. Plaintiffs believe that any prospect of a settlement is unlikely unless and until new trial dates are set. Meanwhile, Plaintiffs' ability to attend or meaningfully participate in their trials becomes less likely with each passing day. We, of course, appreciate that these cases are not the only ones that have been recently transferred to this Court and that you will require time

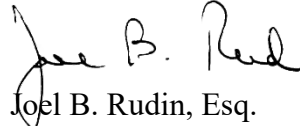
¹ To avoid duplication, Plaintiffs cite to the document numbers in *Boyd v. City of Buffalo, et al.*, Case No. 22-cv-519, to refer to the docket entries in both cases.

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to consider the pending summary judgment motions. However, due to the extraordinary circumstances of these cases, we respectfully request a conference to discuss case scheduling, including new trial dates, at the Court's earliest convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joel B. Rudin".

Joel B. Rudin, Esq.
*Co-Counsel for Plaintiffs Darryl Boyd and
John Walker, Jr.*

JBR/tp

cc: Clerk of the Court

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